

State of Utah
Administrative Rule Analysis

NOTICE OF PROPOSED RULE

The agency identified below in box 1 provides notice of proposed rule change pursuant to *Utah Code* Sections 63-46a-4. Please address questions regarding information on this notice to the agency. The full text of all rule filings is published in the *Utah State Bulletin* unless excluded because of space constraints. The full text of all rule filings may also be inspected at the Division of Administrative Rules.

DAR file no:		Date filed:	
Utah Admin. Code ref. (R no.):	R156-76	Time filed:	
Changed to Admin. Code Ref. (R no.):			
1.	Agency: Commerce/Division of Occupational and Professional Licensing		
	Room no.:		
	Building: Heber M. Wells Building		
	Street address 1: 160 East 300 South		
	Street address 2:		
	City, state, zip: Salt Lake City UT 84111-2316		
	Mailing address 1: PO Box 146741		
	Mailing address 2:		
	City, state, zip: Salt Lake City UT 84114-6741		
	Contact person(s):		
	Name:	Phone:	Fax:
	Dan S. Jones	801-530-6720	801-530-6511
(Interested persons may inspect this filing at the above address or at DAR between 8:00 a.m. and 5:00 p.m. on business days.)			
2.	Title of rule or section (catchline):		
	Professional Geologist Licensing Act Rules		
3.	Type of notice:		
	New ___; Amendment XX; Repeal ___; Repeal and Reenact ___		
4.	Purpose of the rule or reason for the change:		
	The Division and Professional Geologists Licensing Board are proposing amendments to clarify the scope of practice provisions and to add the administrative fine schedule to the rule.		
5.	This change is a response to comments from the Administrative Rules Review Committee.		
	Yes ___; No XX		
6.	Summary of the rule change:		
	Throughout the rule, the term "rules" has been replaced with "rule". Section 102-Definitions: In paragraph (4) amendments are proposed to clarify non-professional activities that may be performed without holding a professional geologist license. The definition of the practice of geology in the statute (Title 58, Chapter 76) is so broadly worded that it appears to include functions that can be performed by unlicensed persons. Section 501-Administrative Penalties/Unlawful Conduct is being added to incorporate the fine schedule into the rule in order to be current and consistent with the fine schedules for other occupations and professions regulated by the Division.		
7.	Aggregate anticipated cost or savings to:		
	A) State budget:		

	<p>The Division will incur minimal costs of approximately \$50 to reprint the rule once the proposed amendments are made effective. Any costs incurred will be absorbed in the Division's current budget.</p>																				
	<p>B) Local government:</p> <p>Proposed amendments do not apply to local governments; therefore no costs or savings are anticipated. The proposed amendments only apply to licensed professional geologists, applicants for licensure as a professional geologist and unlicensed persons who are allowed to engage in certain aspects of the practice of geology without a license. The proposed fine schedule only affects persons who violate the specified sections of Title 58, Chapter 76 as outlined in the fine schedule.</p>																				
	<p>C) Small businesses (fewer than 50 employees) AND persons other than businesses:</p> <p>The proposed fine schedule amendment will affect persons (both licensed and unlicensed) who violate the specified sections of Title 58, Chapter 76. The Division is unable to determine how many fines in the future may be issued to persons violating the specified sections of Title 58, Chapter 76. The proposed fine schedule will also have an impact on fines collected through stipulated or written agreements; but it is expected this impact would be minimal.</p>																				
8.	<p>Compliance costs for affected persons ("person" means any individual, partnership, corporation, association, governmental entity, or public or private organization or any character other than an agency):</p> <p>The Division is not able to determine an exact compliance cost to persons affected by the proposed fine schedule amendment as it would depend on what violation they had committed and if the violation was a first, second, or third offense.</p>																				
9.	<p>Comments by the department head on the fiscal impact the rule may have on businesses:</p> <p>No fiscal impact to businesses is anticipated from the clarification of the definition of "the practice of geology before the public." This rule filing also codifies the agency's fine schedule. This schedule is still within the ranges permitted by Section 58-76-502, and is in line with the fine schedule for other licensed professions. Thus, violators of the applicable laws and rules will be paying more per violation, but no other fiscal impact to businesses is anticipated. Francine A. Giani, Executive Director</p>																				
10.	<p>This rule change is authorized or mandated by state law, and implements or interprets the following state and federal laws. State code or constitution citations (required): Section 58-76-101 and Subsections 58-1-106(1)(a) and 58-1-202(1)(a)</p>																				
11.	<p>This rule adds, updates, or otherwise changes the following titles of materials incorporated by references (a copy of materials incorporated by reference must be submitted to DAR; if none, leave blank):</p>																				
12.	<p>The public may submit written or oral comments to the agency identified in box 1. (The public may also request a hearing by submitting a written request to the agency. The agency is required to hold a hearing if it receives requests from ten interested persons or from an association having not fewer than ten members. Additionally, the request must be received by the agency not more than 15 days after the publication of this rule in the <i>Utah State Bulletin</i>. See Section 63-46a-5 and Rule R15-1 for more information.)</p> <table border="1"> <tr> <td colspan="2">A) Comments will be accepted until 5:00 p.m. on (mm/dd/yyyy):</td> <td>12/31/2007</td> </tr> <tr> <td colspan="3">B) A public hearing (optional) will be held:</td> </tr> <tr> <td>on (mm/dd/yyyy):</td> <td>at (time):</td> <td>At (place):</td> </tr> <tr> <td>12/06/2007</td> <td>10:00 am</td> <td>160 East 300 South, Conference Room 474, Salt Lake City, Utah</td> </tr> <tr> <td></td> <td></td> <td></td> </tr> <tr> <td></td> <td></td> <td></td> </tr> </table>			A) Comments will be accepted until 5:00 p.m. on (mm/dd/yyyy):		12/31/2007	B) A public hearing (optional) will be held:			on (mm/dd/yyyy):	at (time):	At (place):	12/06/2007	10:00 am	160 East 300 South, Conference Room 474, Salt Lake City, Utah						
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13.	<p>This rule change may become effective on (mm/dd/yyyy): 01/07/2008</p> <p>NOTE: The date above is the date on which this rule MAY become effective. It is <i>NOT</i> the effective date. After the date designated in Box 12(A) above, the agency <i>must</i> submit a Notice of Effective Date to the Division of Administrative Rules to make this rule effective. Failure to submit a Notice of Effective Date will result in this rule lapsing and will require the agency to start the rulemaking process over.</p>																				

14.	Indexing information -- keywords (maximum of four, in lower case, except for acronyms (e.g., "NASA") or proper nouns (e.g., "Medicaid")):		
	licensing	professional geologists	
	geology		
15.	Attach an RTF document containing the text of this rule change (filename):		R156-76.pro
To the agency: Information requested on this form is required by Sections 63-46a-4, 5, 6, and 10. Incomplete forms will be returned to the agency for completion, possibly delaying publication in the <i>Utah State Bulletin</i> , and delaying the first possible effective date.			
AGENCY AUTHORIZATION			
Agency head or designee, and title:		F. David Stanley, Director	Date (mm/dd/yyyy): 11/06/2007

ProposedRule.doc 9/26/2003

R156. Commerce, Occupational and Professional Licensing.

R156-76. Professional Geologist Licensing Act Rule[s].

R156-76-101. Title.

Th[ese]is rule[s-are]is known as the Professional Geologist Licensing Act Rule[s].

R156-76-102. Definitions.

In addition to the definitions in Title 58, Chapters 1 and 76, as used in Title 58, Chapters 1 and 76, or th[ese]is rule[s]:

(1) "ASBOG" means Association of State Boards of Geology.

(2) "Geosciences", as used in Subsection 58-76-302(4)(a), means an earth science degree, which results in sufficient geological knowledge to enable the practice of geology before the public.

(3) "Qualified individual", as used in Section R156-76-302c, means a person who is licensed as a professional geologist in a recognized jurisdiction, or who otherwise meets the requirements for licensure as defined in Sections 58-76-302 and R156-76-302b and R156-76-302c.

(4) "Practice of geology before the public", as used in Subsection 58-76-102(3) does not include the following activities:

(a) routine sampling, laboratory work or geological drafting, where the elements of initiative, scientific judgment, and decision-making are lacking;

(b) data acquisition where geological interpretation is minimal and incidental (for example mud-logging, wireline logging, rock property measurements, dating, and geochemical, geophysical and biological surveys);

(c) ~~does not include~~ the following aspects of paleontology:

(~~a~~)i) taxonomy;

(~~b~~)ii) biologic analysis of organisms; or

(~~e~~)iii) investigation and reporting of deposits which may be fossiliferous, including incidental geological analysis[~~-~~];
or

(~~5~~)d) ~~["Practice of geology before the public" does not include]~~ the following aspects of the practice of anthropology and archeology:

(~~a~~)i) archeological survey, excavation, and reporting;

(~~b~~)ii) production of archeological plan views, profiles, and regional overviews; or

(~~e~~)iii) investigation and reporting of artifacts or deposits that are modified or affected by past human behavior.

(~~6~~)5) "Principal", as used in Subsection 58-76-603(2), means the licensee assigned to and personally accountable for

the production of specified professional geologic projects within an organization.

([7]6) "Recognized jurisdiction", as used in Subsection R156-76-302d(2), means any state, district or territory of the United States that issues a license for a professional geologist, and whose licensure requirements include:

(a) a bachelors or post graduate degree in the geosciences from an accredited institution or equivalent foreign education as determined by the International Credentialing Association and the Division in collaboration with the board;

(b) documented qualifying experience requirements similar to the experience requirements found in Subsection 58-76-302(5) and Section R156-76-302; and

(c) passing the ASBOG Fundamentals of Geology (FG) and the ASBOG Principles and Practice of Geology (PG) Examination.

([8]7) "Unprofessional conduct", as defined in Title 58, Chapters 1 and 76, is further defined, in accordance with Subsection 58-1-203(5), in Section R156-76-[501]502.

R156-76-103. Authority - Purpose.

Th[ese]is rule[s-are]is adopted by the division under the authority of Subsection 58-1-106(1) to enable the division to administer Title 58, Chapter 76.

R156-76-304. Exemption from Licensure.

The exemption from licensure in Subsection 58-76-304(1) is defined or clarified as follows: An "employee" or "subordinate", as used therein and elsewhere in Title 58, Chapter 76, or th[ese]is rule[s], means an individual who:

(1) is not licensed as a professional geologist;

(2) works with, for, or provides professional geologic services on work initiated by a person licensed as a professional geologist; and

(3) works only under the administration, charge, control, command, authority, oversight, guidance, jurisdiction, regulation, management, and authorization of a person licensed as a professional geologist.

R156-76-501. Administrative Penalties - Unlawful Conduct.

In accordance with Sections 58-76-501 and 58-76-502 and Subsections 58-1-501(1)(a) through (d), unless otherwise ordered by the presiding officer, the following fine schedule shall apply.

(1) Engaging in unlicensed practice or using any title that would cause a reasonable person to believe the user of the title is licensed under this chapter.

First Offense: \$800

Second Offense: \$1,600

(2) Engaging in, or representing oneself as engaged in the practice of geology as a corporation, proprietorship, partnership, or limited liability company unless exempted from licensure.

First Offense: \$800

Second Offense: \$1,600

(3) Impersonating another licensee or engaging in practice under this chapter using a false or assumed name, unless permitted by law.

First Offense: \$1,000

Second Offense: \$2,000

(4) Knowingly employing any person to practice under this chapter who is not licensed to do so.

First Offense: \$1,000

Second Offense: \$2,000

(5) Knowingly permitted any person to use his license except as permitted by law.

First Offense: \$1,000

Second Offense: \$2,000

(6) Citations shall be issued for third offenses, except in extraordinary circumstances approved by the investigative supervisor. If a citation is issued for a third offense, the fine is double the second offense amount, with a maximum amount not to exceed the maximum fine allowed under Subsection 58-76-502(1)(i).

(7) If multiple offenses are cited on the same citation, the fine shall be determined by evaluating the most serious offense.

(8) An investigative supervisor may authorize a deviation from the fine schedule based upon the aggravating or mitigating circumstances.

(9) In all cases the presiding officer shall have the discretion, after a review of the aggravating and mitigating circumstances, to increase or decrease the fine amount based upon the evidence reviewed.

R156-76-[501]502. Unprofessional Conduct.

"Unprofessional conduct" includes:

(1) submitting an incomplete final plan, specification, report or set of plans to:

(a) a client, when the licensee represents, or could reasonably expect the client to consider the plan, specification, report or set of plans to be complete and final; or

(b) to a government official for the purpose of obtaining a permit;

- (2) failing as a principal to exercise responsible charge;
- (3) failing as a supervisor to exercise supervision of an employee, subordinate, associate or drafter; or
- (4) failing to conform to the accepted and recognized standards and ethics of the profession including those stated in the "American Geological Institute's Guidelines for Ethical Professional Conduct", April 2, 1999, which is hereby incorporated by reference.

KEY: licensing, professional geologists, geology

Date of Enactment or Last Substantive Amendment: [~~January 20,~~
~~2004~~]2008

Notice of Continuation: May 1, 2007

Authorizing, and Implemented or Interpreted Law: 58-1-
106(1)(a); 58-1-202(1)(a); 58-76-101